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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MEDITERRANEAN SHIPPING COMPANY, S.A.

ECF CASE

Plaintiff,

Case No. 08cv1908 (RMB)

- against -

SUNNY LIGHT, INC. D/B/A SUNNY LIGHT  
COMPANY and SHANGHAI QIU XIN CO., LTD.,

**VERIFIED COMPLAINT  
AND RULE B ATTACHMENT**

Defendants.  
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Plaintiff MEDITERRANEAN SHIPPING COMPANY, S.A. ("MSC"), by its attorneys,  
DeOrchis & Partners, LLP, as and for its Complaint against Defendants SUNNY LIGHT,  
INC. A/K/A SUNNY LIGHT COMPANY ("SUNNY LIGHT") and SHANGHAI QIU XIN  
CO., LTD., ("SHANGHAI CO."), alleges upon information and belief, as follows:

**JURISDICTION AND VENUE**

1. This is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1333. This Court may exercise supplemental jurisdiction over MSC's state law claims pursuant to 28 U.S.C. § 1367.

2. Venue is proper under 28 U.S.C. §§ 1391 (c) and article 2(b) of MSC's bill of lading.

### **PARTIES**

3. At and during all times hereinafter mentioned, Plaintiff MSC was and still is a foreign corporation organized and existing under and by virtue of the laws of the State of Switzerland, with an office and principal place of business located at 40 avenue Eugene Pittard, Geneva, CH-1206, Switzerland. MSC, at all times hereinafter mentioned, was engaged in the business of ocean transportation services.

4. Upon information and belief, Defendant SUNNY LIGHT was and still is a corporation organized and existing under and by virtue of the laws of one of the state of the U.S. with an office and principal place of business located at 39 Bellevue avenue, Appleton, 54913 Wisconsin. SUNNY LIGHT, at all times hereinafter mentioned, was engaged in the business of buying and selling groceries.

5. Upon information and belief, Defendant SHANGHAI QIU XIN CO., LTD. was and still is a corporation organized and existing under and by virtue of the laws of China with an office and principal place of business located at no. 220 Jiadang Road, Jiading Dist., Shanghai, China. SHANGHAI QIU XIN CO., LTD., at all times hereinafter mentioned, was engaged in the business of import and export.

### **BACK GROUND FACTS**

6. On or about March 17, 2005 MSC issued bill of lading MSCUNC456950 for the transportation by sea of two containers bearing serial numbers MSCU8737393 and MSCU8242558 containing bales of "pulp adult disposable diapers" from New York to Shanghai, China. Attached hereto as Exhibit A is a true and accurate copy of bill of lading MSCUNC456950 and its terms and conditions.

7. The containers were shipped freight prepaid by defendant SUNNY LIGHT.

8. The shipment arrived in Shanghai, China and was unloaded by MSC on or around April 24, 2005. However, the consignee, defendant SHANGHAI CO, failed to pick up the containers with Chinese customs.

9. Plaintiff sent a notice of abandonment to the Defendants on or around May 27, 2005.

10. Defendant SUNNY LIGHT asked Plaintiff for a waiver of the demurrage and that the containers be shipped back to the United States.

11. A request to Chinese customs for the return of the containers to the United States was not approved on or around January 2006.

12. A first provisional invoice for demurrage charges were sent to defendant SUNNY LIGHT on or around January 13, 2006.

13. On or around May 31, 2007, Plaintiff informed defendant SUNNY LIGHT that Chinese Customs required Plaintiff to destroy the shipment in Shanghai and that the cost for the destruction would represent about \$13,341.00.

14. On June 28, 2007, Plaintiff informed defendant SUNNY LIGHT that the shipment had been destroyed and that it was responsible for those charges.

15. Plaintiff sent its final invoice for an amount of \$89,800.00 for demurrage charges and destruction costs associated with the shipment transported under bill of lading MSCUNC456950 on July 11, August 10 and September 6, 2007.



16. On November 19, 2007, Plaintiff's counsel sent a letter to defendant SUNNY LIGHT requesting the payment of \$89,800.00 and advising that legal action would be taken in the absence of a full payment.

17. Plaintiff has not received payment.

**AS FOR A FIRST CAUSE OF ACTION  
FOR PAYMENT OF CHARGES INCURRED BY PLAINTIFF  
AS AGAINST ALL DEFENDANTS**

18. Each and every one of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.

19. The terms of the bill of lading MSCUNC456950 govern the contractual relationship between Plaintiff and the Defendants.

20. The Defendants are liable to Plaintiff under sections 21, 23, 24 and 30 of the bill of lading for all demurrage charges and charges associated with the destruction of the shipment at the port of arrival.

21. The Defendants never contested the existence of the charges.

22. Plaintiff seeks payment of the charges incurred in the amount of \$89,800.00 for unpaid demurrage charges and charges associated to the destruction of the shipment under the terms of its bill of lading MSCUNC456950.

**AS FOR A SECOND CAUSE OF ACTION  
FOR QUANTUM MERUIT  
AS AGAINST ALL DEFENDANTS**

23. Each and every one of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.

24. Plaintiff incurred charges for the Defendants.

25. These charges are in the amount of \$89,800.00.

26. The Defendants failed to pay Plaintiff of its charges.

27. By reason of the foregoing, Plaintiff suffered damages in a sum of \$89,800.00.

28. Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against the Defendants, and further, award Plaintiff its fees and costs and additional relief as this Court deems just.

**APPLICATION FOR ISSUANCE  
OF A RULE B ATTACHMENT**

29. Each and every one of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.

30. The Defendants cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, the Defendant has, or will have during the pendency of this action, assets within this District and subjects to the jurisdiction of this Court, held in the hands of garnishees including, but not limited to, HSBC (USA), Bank of America, Wachovia, Citibank, American Express Bank, J.P. Morgan Chase, Bank of New York, Deutsche Bank, UBS, and/or Standard Chartered Bank, which are believed to be due and owing to the Defendants.

31. The total amount sought to be attached by Plaintiff pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims is \$89,800.00, plus interest and costs, calculated as follows:

- |      |  |             |
|------|--|-------------|
| (i)  | Demurrage charges and charges associated to destruction of shipment paid by Plaintiff:               | \$89,800.00 |
| (ii) | Pre-judgment interest at 9% from 07/11/2007 to 02/07/2008:<br>(210 days/365 days * \$89,800.00 @ 9%) | \$4,649.91  |

**Total:** **\$94,449.91**

32. Plaintiff respectfully seeks an Order from this Court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching any assets of the Defendants, held by the aforesaid garnishees for the purpose of obtaining personal jurisdiction over the Defendants, and to secure and/or satisfy Plaintiff's claims as described above.

**WHEREFORE**, Plaintiff prays:

(a) For a Judgment to be entered in favor of Plaintiff on each and all of the Causes of Action above;

(b) For a Judgment awarding Plaintiff damages;

(c) For a Judgment awarding Plaintiff its reasonable costs and expenses, including attorneys' fees incurred in connection with the prosecution of this action to the extent allowed by law;

(d) For a Judgment awarding Plaintiff such other and further relief as the Court may deem just and equitable;

(e) That process in due form of law issue against each one of the Defendants, citing each to appear and answer under oath all and singular the matters alleged in the Complaint;

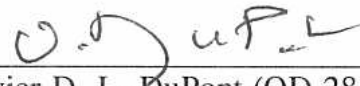
(f) That since the Defendants cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and

Maritime Claims, attaching all tangible or intangible property in whatever form or any other funds held by any garnishee, including, but not limited to, HSBC, Bank of America, Wachovia, Citibank, American Express Bank, J.P. Morgan Chase, Bank of New York, Deutsche Bank, UBS, and/or Standard Chartered Bank, which are believed to be due and owing by the Defendant, in the amount of \$94,449.91 to satisfy and/or secure Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B to answer the matters alleged in the Complaint;

(j) That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof.

Dated: New York, New York  
February 7, 2008

DEORCHIS & PARTNERS, LLP  
Attorneys for Plaintiff

By:   
Olivier D. L. DuPont (OD-2817)  
61 Broadway, 26<sup>th</sup> Floor  
New York, New York 10006-2802  
(212) 344-4700

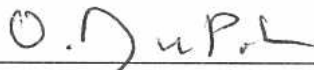


VERIFICATION

Olivier D. L. DuPont declares and states that he is a member of the law firm of DeOrchis & Partners, LLP, attorneys for Plaintiff in this action, and that the foregoing Verified Complaint is true to his knowledge, except as to matters therein stated on the information and belief and as to those matters, he believes them to be true; that the ground of his belief as to all matters not stated upon knowledge is information furnished to him to by Plaintiff; that the reason why the Verification is not made by Plaintiff is that Plaintiff is a corporation whose principal place of business is outside the New York County, and that due to the exigent nature of this proceeding it was not possible to obtain a Verification from Plaintiff; and that he is authorized to so verify.

I declare and state under penalty of perjury that the foregoing is true and correct.


Executed on February 7, 2008

  
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Olivier D. L. DuPont



**EXHIBIT A**

**(Bill of lading MSCUNC456950 and terms and conditions)**

 <b>MEDITERRANEAN SHIPPING COMPANY S.A., Geneva</b>				<b>Copy - Non Negotiable</b> <b>MSCUNC456950</b>	
IS IT: PORT - TO - PORT SHIPMENT? (Fill - in Boxes 7 & 8; Tick ->)		<b>X</b>	COMBINED TRANSPORT SHIPMENT? (Fill - in Boxes 5, 6, 9 & 10; Tick ->)		No of original Bol (number & words) <b>3 Three</b>
					No of Bol Rider Pages (number & words) <b>0 Zero</b>
(1) SHIPPER: (Full details) <b>SUNNY LIGHT COMPANY,</b> 39 BELLEVUE PLACE APPLETON, WI 54913 U.S.A.			REF#: 61503-10-042 (2) CONSIGNEE (NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER) <b>SHANGHAI QIU XIN CO., LTD.</b> NO. 220 JIADANG ROAD, JIADING DIST, TEL: 021-5992 4186 Shanghai China		
(3) NOTIFY: (No responsibility shall attach to Carrier or to this Agent for failure to notify) <b>SHANGHAI QIU XIN CO., LTD.</b> NO. 220 JIADANG ROAD, JIADING DIST, TEL: 021-5992 4186 Shanghai China			(4) SPACE FOR CARRIER'S AGENTS ENDORSEMENTS (FOL/FCL/BL/SSC)		
(5) FRE. CARRIED BY: (Combined Trans. only) XXXXXXXXXXXXXXXXXXXX		(6) PLACE OF RECEIPT: (Combined Transport only) XXXXXXXXXXXXXXXXXXXX			
(7) PORT OF LOADING New York NY		(8) PORT OF DISCHARGE Shanghai, China			
(9) PLACE OF DELIVERY: (Comb. Trans. only) XXXXXXXXXXXXXXXXXXXX		(10) MODE OF ONCARRIAGE: (Comb. Trans. only) XXXXXXXXXXXXXXXXXXXX			
(11) VESSEL & VOY. NO. DELAWARE BRIDGE - 0510R		(12) AGENTS AT PORT OF DISCHARGE/DELIVERY MSC SHANGHAI			
<b>SHIPPER'S MEMORANDA: BOXES (A) TO (E) AND BOX 13 ARE NOT PART OF THIS B/L CONTRACT - FOR MERCHANT'S USE ONLY.</b>					
(A) DOCUMENT No: NYC213197		(C) FORWARDING AGENT - REFERENCE <b>FR. MEYER'S SOHN NORTH AMERICA LLC</b> ONE FIRST AVENUE, SUITE 100 West Reading, PA 19611 FMC #: 16991F		(E) SECOND NOTIFY	
(B) SERVICE CONTRACT No.					
(D) POINT & COUNTRY OF ORIGIN United States					
(14) CARRIER'S RECEIPT (Continued on attached Bill of Lading Rider page(s), if applicable)			(13) All details shown in Box 13 are furnished by the Shippers, being their Memoranda. Quantity, Condition, Contents and all other information shown in Box 13 are unknown to the Carrier, who has no means to verify their correctness and does not acknowledge them. The statements of the Shippers in Box 13 do not engage the Carrier contractually or in any manner.		
Identity Marks of Cont. or other packages and seal number(s)	Conting. number of cont. or other packages	Total nty of cont. or other packages received by the carrier	Cargo Description (Continued on attached Bill of Lading Rider page(s), if applicable)	Gross Weight	Measurement
MSCU8737393 40' High Cube 9495359	1	1	34 Bale(s) of PULP ADULT DISPOSABLE DIAPERS.	12,930.000 kgs 28,505.771 lbs.	40.000 cu. m. 1,412.576 cu. ft.
MSCU8242558 40' High Cube 9495389	1	1	40 Bale(s) of PULP ADULT DISPOSABLE DIAPERS. 2 X 40' CONTAINERS 74 BALES 26870.00 KG  No SED required AES - 510401141-61503-10-042	13,940.000 kgs 30,732.439 lbs.	40.000 cu. m. 1,412.576 cu. ft.
If above commodities, technology or software were exported from the USA, the export administration regulations must be complied with by the Merchant. Diversion contrary to US law is prohibited.					
(15) FREIGHT & CHARGES (**PAYABLE** signifies INTENTION. Cargo shall not be delivered unless Freight & Charges are paid)					
<b>FREIGHT &amp; CHARGES</b>			<b>BASIS</b>	<b>RATE</b>	<b>POL</b>
Ocean Freight			2.00	USD 700.00	USD 1,400.00
Bill of Lading / Documentation			1.00	USD 25.00	USD 25.00
Ad Valorem Charges If Any					1,425.00
					<b>Freight Prepaid</b>
					PAYABLE IN POD
					ELSEWHERE
<small>         IN ACCEPTING THIS B/L, the Merchant agrees to be bound by all the terms, conditions, limitations and exclusions whether printed, stamped or written hereon and page 1 and, in particular agrees that the Carrier shall have the right to stuff, tally, to reweigh and to carry on deck all kinds of containers including trailers, tanks, flats, canvas tops, pallets or similar articles used to consolidate goods. The Carrier will give these documents obligation from release of container, which includes the duty of collecting papers as well as allowing a free period in accordance with the tariff of the port of destination and as advised by the local agent from the day of discharge in vessel. Containers, trailers and other equipment demurrage is levied thereon. All containers to be used are subject to inspection by the Shippers and Consignee and must be re-delivered clean and undamaged to a place nominated by the Carrier, failing which the Shippers and Consignee are jointly liable for the costs of replacement, demurrage and repair.          RECEIVED FOR SHIPMENT at, as per external gross (over and overboard) the containers, other packages or units bearing marks and/or numbers indicated in the "Carrier's Receipt" above, and to contain the quantity, of goods, weights and measurements indicated in the "Particulars for Goods to be Shipped" above which particulars have not been checked or verified by the Carrier. Such particulars are for Shipper's and Consignee's use only and are not part of the Bill of Lading terms and are not binding on the carrier.          IN WITNESS whereof, the no. of Original Bill of Lading shown at the top right corner of this document have been signed. If this is a negotiable (To Order) B/L, the goods will only be delivered if the original B/L, properly endorsed by the Shippers and/or by the bank concerned (and not by the local agent), is submitted, the other to be returned to the shipper and void.       </small>					
PLACE AND DATE OF ISSUE <b>NEW YORK - MSC (USA) INC.</b> 17-Mar-2005			SHIPPED ON BOARD DATE <b>17-Mar-2005</b>		As Agents for the Carrier



